

REMARKS

This Amendment is submitted in response to the Official Action dated 24 November 2010 and in conjunction with a simultaneously filed Request for Continued Examination. Claims 1, 3-5, 8, 10-12, 14 and 16 are amended. Claims 1-5 and 8, 10-16 remain pending.

Claims 1-5, 7-12, 14, & 16 are again rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,096,669 to Lauks et al. (hereinafter "Lauks"). With respect to claim 1, the Examiner maintains that Lauks teaches a testing region in fluid communication with a collection region, the testing region comprising an open ended channel passing through the body of the sampling device and adapted to be sealed off between sensor walls of the analyzer. To this effect the Examiner refers, serially, to Lauks cavity 18, conduit 228 and conduit 220, characterizing the three elements as an open-ended channel in as much as the sensing conduit 220 "is open to the environment outside the analyzer and also open in respect to passing over sensors when actuated." See Nov. 24, 2010 Office Action at ¶¶ 46-47. Applicant first notes that none of the identified elements; cavity 18, conduit 228 and conduit 220; are open to the environment outside the analyzer in any way. Lauks specifically states that the orifice 108 into which the sample is initially drawn is sealed by a cap 89. Lauks Col. 9 lns. 67-68. This is necessary to operation of the device in as much as the cavity 22 and bladder 229 could not operate to force the sample past the capillary break 222 without first sealing the orifice as no pressure could be developed behind the sample. Once the orifice 108 is sealed, there is no opening or connection between the various conduits and cavities within the device including those identified by the Examiner and any external environment.

Additionally, Applicant is unclear how "passing over the sensors when actuated" relates to or otherwise results in Lauks "channel" as described by the Examiner (i.e. cavity 18, conduit 228 and conduit 220) being open to an external environment of the sampling device. While it is true that the internal electrochemical sensors of the Lauks device are exposed to conduit 220 within the device, there is no teaching or suggestion of exposure to an external sensing element, ultrasonic or otherwise. Applicant believes the Examiner's analysis overlooks the specific construction of the claimed invention and applies Lauks in a manner that overstates the teachings of the reference. Applicant also takes issue with the Examiner's assertion that the Lauks "channel" passes through the thin elongate body as recited in the present claim. In support of the assertion the Examiner indicates parenthetically in apparent reference to the Lauks cavity 18,

conduit 228 and conduit 220 that they are "through in the vertical direction and partially in the lateral direction, figure 2". The term *through* means "from one end or side to the other"¹ and *passing through* thus requires that the open-ended channel pass from one end or side to the other. Collectively the Lauks cavity 18, conduit 228 and conduit 220 trace a tortuous pass about but entirely within the collection device as seen in the referenced figure 2. No where do any of these channels pass through the outside walls of the device such that the Applicant believes the Examiner's assertion regarding the claimed open-ended channel being anticipated by the reference is in error.

Nevertheless, in view of the Examiner's indication that "features pertaining to the ultrasonic sensor in relation to the structure of the device [discussed in the remarks to amendment filed Sept. 8, 2010], upon which Applicant relies are not recited in the rejected claim(s)" (Nov. 24, 2010 Office Action at ¶ 46), Applicant has endeavored by the present amendment and request for continued examination to further detail and claim the structure of the present invention and more specifically of the testing region.

Claim 1 is herein amended to recite a collection region including an aperture through which a fluid flows into a *capillary tube*. Claim 1 is further amended to recite that the testing region comprises an open ended channel *perpendicular to the capillary tube* and passing through the thin elongate body of the collection device *from one external surface to another external surface* for containing a portion of the collected fluid *such that said portion is exposed to an external environment of said thin elongate body*. This structure is clearly seen in at least FIGs. 3-9 of the present application and described at at least page 10 line 24 through page 11 line 14 and page 14 line 24 through page 15 line 18 of the specification a filed. This structure maintains a portion of the collected fluid in open communication with the environment outside the fluid sample collection device where it can be *direct[ly] contact[ed] at each open end of [the] channel [by] a sensing surface of [the] said ultrasonic analyzer*. The now claimed structure is clearly now more distinguished over the Lauks reference in at least as much as the fact that the reference does not provide any open contact between an external sensor wall and the fluid sample. As previously argued, it is economically and practically infeasible to provide an ultrasonic sensor in each fluid sample collection device without significantly altering and enlarging the collection

¹ "through." *Merriam-Webster Online Dictionary*, 2008. <http://www.merriam-webster.com> (23 Feb. 2011).

device and diminishing the portable nature of the device. By these amendments Applicant believes the claimed sample collection device is patentably distinguished over the prior art.


Claims 2-5 depend from claim 1 and incorporate the same patentable limitations such that they are similarly believed to be patentably distinguished. Claims 3-5 are amended only to remain consistent with claim 1.

Independent Claims 8, 10 and 14 are amended to require the same limitations as recited above with respect to claim 1 and are believed likewise similarly patentably distinguished over the prior art. Claims 11, 12 and 16 depend from independent claims believed to be patentably distinguished as described above and are also believed to be patentably distinguished in a like manner. Claims 11, 12 and 16 are amended to maintain consistency with their respective parent claims.

Consequently, all of the Examiner's rejection of all of claims 1-5, 8 and 10-16 under 35 USC 102 is respectfully traversed.

In light of the above amendments and remarks, all claims now pending are believed to avoid the rejections set forth in the Official Action and thus be in condition for allowance. A Notice to this effect is respectfully requested for claims 1-5, 8 and 10-16.

Respectfully submitted,



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